

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE )  
LITIGATION )

U.S. DISTRICT COURT  
DISTRICT OF MASS  
MDL NO. 1456  
Civil Action No. 01-12257-PBS

THIS DOCUMENT RELATES TO )  
01-CV-12257-PBS AND 01-CV-339 )

Hon. Patti B. Saris

**PARTLY ASSENTED TO MOTION TO FILE  
CORRECTED DECLARATION UNDER SEAL**

Johnson & Johnson, Ortho Biotech Products, L.P., and Centocor, Inc. (the “Johnson & Johnson Defendants”), by their attorneys, respectfully move this Court for leave to file the annexed “corrected” copy of the Declaration of Jayson S. Dukes in Support of the Johnson & Johnson Defendants’ Motion for Summary Judgment (the “Dukes Declaration”) under seal. In support of the motion, the Johnson & Johnson Defendants state as follows:

The Johnson & Johnson Defendants’ pending motion for summary judgment is supported, in part, by the Dukes Declaration. The Dukes Declaration was filed under seal with plaintiffs’ consent.

After the Dukes Declaration was filed, minor errors were discovered in some of the exhibits. Corrected copies of those exhibits were provided to plaintiffs, and plaintiffs have consented to the filing of the attached corrected version of the Dukes Declaration. However, plaintiffs no longer agree that the Dukes Declaration should be sealed, or that the corrected Dukes Declaration should be filed under seal. Accordingly, this motion is “assented to” only in

part. Plaintiffs agree that the corrected Dukes Declaration may be filed as a substitute for the original Dukes Declaration; plaintiffs do not agree that it should be filed under seal.

The Johnson & Johnson Defendants respectfully request that the corrected Dukes Declaration be filed under seal. It contains calculations of the so-called “average selling price” and resulting “spreads” for Procrit and Remicade, both as calculated by Dr. Hartman, and as calculated by Mr. Dukes. *E.g.*, Exhibits 3, 4, 5, 6, 8, 9, 10, and 11. It includes exhibits listing specific Procrit and Remicade sales to specific customers at specific prices. *E.g.*, Exhibits 14, and 15. This pricing information was designated “HIGHLY CONFIDENTIAL” pursuant to the Protective Order entered by this Court on December 13, 2002.

By Order dated March 27, 2006, the court granted the Johnson & Johnson Defendants’ motion to file the electronic exhibits to the Dukes Declaration under seal [Docket No. 2334]. The electronic exhibits contained similar “HIGHLY CONFIDENTIAL” pricing information. As the Court’s March 27 Order implicitly reflects, pricing information may appropriately be filed under seal.

WHEREFORE, the Johnson & Johnson Defendants respectfully request that this Court grant them leave to file the corrected Dukes Declaration and exhibits under seal.

Dated: May 10, 2006

/s/ Andrew D. Schau.

Andrew D. Schau  
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*Attorneys for Johnson & Johnson, Ortho Biotech  
Products, L.P., and Centocor, Inc.*

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

Pursuant to Local Rule 7.1(A)(2), the undersigned certifies that I conferred with counsel for plaintiffs and was advised that plaintiffs consent to this motion in part, and do not consent to this motion in part, as described in the motion.

/s/ Andrew D. Schau

Andrew D. Schau

**CERTIFICATE OF SERVICE**

I certify that on May 10, 2006 a true and correct copy of the foregoing **PARTLY ASSENTED TO MOTION TO FILE CORRECTED DECLARATION UNDER SEAL** was served on all counsel via Lexis/Nexis.

/s/ Andrew D. Schau

Andrew D. Schau